

Opinion filed November 17, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-14-0167
v.)	Circuit No. 12-CF-761
)	
RUPERT W. LINER,)	Honorable
)	David A. Brown,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court, with opinion.
Justices Carter and Wright concurred in the judgment of the court, with opinion.

OPINION

¶ 1 The defendant, Rupert W. Liner, appeals the circuit court's *sua sponte* denial of his motion to withdraw guilty plea and vacate sentence on the basis that the motion was untimely filed and the circuit court lacked jurisdiction. The defendant argues that his motion was timely filed under the "mailbox rule" and that this cause should be remanded for *de novo* postplea proceedings because reappointed counsel failed to file a certificate of compliance pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). Because we find that the defendant's

motion was untimely filed and Rule 604(d) did not require the circuit court to hold a hearing on the issue of jurisdiction, we affirm.

¶ 2

FACTS

¶ 3

The defendant was charged by indictment with burglary (720 ILCS 5/19-1(a) (West 2012)); aggravated battery (720 ILCS 5/12-3.05(d)(4) (West 2012)); two counts of retail theft (720 ILCS 5/16-25(a)(1) (West 2012)); and aggravated assault (720 ILCS 5/12-2(a) (West 2012)). The circuit court appointed the public defender to represent the defendant.

¶ 4

The defendant pled guilty to burglary on February 5, 2013. In exchange, the State agreed to a sentence of 4½ years' imprisonment and dropped the remaining charges.

¶ 5

The defendant filed a *pro se* motion to withdraw guilty plea and vacate sentence, which was filed on March 11, 2013. The defendant attached his own affidavit to the motion, which was not notarized. The motion contained a certificate of service which stated as follows:

"I, Rupert W. Liner, state that I served a copy of the document to which this affidavit is attached upon each party *** by enclosing the same in a sealed envelope plainly addressed as is disclosed by the pleadings of record herein and by depositing each of such envelopes in the box designated for United States mail at Vandalia Correctional Center, P.O. Box 500, Vandalia, Illinois, together with the appropriate request to the prison official responsible to affix fully prepaid postage thereon on this 6 day of March, 2013."

¶ 6

The motion also contained a verification pursuant to section 1-109 of the Code of Civil Procedure (Code) (735 ILCS 5/1-109 (West 2012)). The verification was not notarized. Neither the verification, proof of service, affidavit, nor the motion itself contained an address of the circuit court or any party to which the motion was sent.

¶ 7 The record contains a letter to the defendant purportedly from attorney Thomas J. Penn, Jr., dated April 12, 2013. The letter stated that the defendant's motion to withdraw guilty plea and vacate sentence had been referred to him for handling. The letter requested more detail regarding the claims raised in the defendant's petition. In his brief, the defendant characterizes this letter as indicating that the public defender who had previously represented the defendant during his guilty plea was reappointed to represent the defendant on his postplea motion.

¶ 8 The circuit court entered an order denying the defendant's motion without further proceedings on January 7, 2014. The circuit court reasoned that the motion was untimely filed, and, consequently, the circuit court no longer had jurisdiction.

¶ 9 ANALYSIS

¶ 10 On appeal, the defendant argues that this cause should be remanded for *de novo* postplea proceedings in accordance with Supreme Court Rule 604(d) because: (1) his motion to withdraw guilty plea and vacate sentence was timely filed under the "mailbox rule"; and (2) reappointed counsel failed to file a Rule 604(d) certificate. We find that the defendant's motion was untimely filed and, consequently, the circuit court lacked jurisdiction to consider the motion. Remand for further proceedings is unwarranted in light of this finding.

¶ 11 I. Timeliness

¶ 12 The defendant argues that his motion was timely filed under the "mailbox rule" although it was received and file-stamped by the circuit clerk more than 30 days after his conviction was entered. The defendant calls our attention to the proof of service attached to the motion stating that the motion was deposited into the mail on March 6, 2013, within the 30-day filing period.

¶ 13 "Under the mailbox rule, pleadings, including posttrial motions [citation], are considered timely filed on the day they are placed in the prison mail system by an incarcerated defendant

[citation]." *People v. Shines*, 2015 IL App (1st) 121070, ¶ 31; see also *People v. Tlatenchi*, 391 Ill. App. 3d 705, 710 (2009). "To rely on the date of mailing as the filing date, a defendant must provide proof of mailing by filing a proof of service that complies with the requirements of Illinois Supreme Court Rule 12(b)(3) (eff. Dec. 29, 2009)." *Shines*, 2015 IL App (1st) 121070, ¶ 33; see also *Tlatenchi*, 391 Ill. App. 3d at 713.

¶ 14 The defendant concedes that at the time he mailed his motion, his proof of service and verification were not in compliance with Supreme Court Rule 12(b)(3), which required the motion to be accompanied by an affidavit stating the time and place of mailing, the complete address that appeared on the envelope, and that proper postage was prepaid. Ill. S. Ct. R. 12(b)(3) (eff. Jan. 1, 2013). However, the defendant notes, Supreme Court Rule 12(b) was subsequently amended and now allows *pro se* petitioners from correctional institutions to enclose a certification pursuant to section 1-109 of the Code (735 ILCS 5/1-109 (West 2012)) in lieu of an affidavit. Ill. S. Ct. R. 12(b)(4) (eff. Sept. 19, 2014). Said certification must state "the time and place of deposit and the *complete* address to which the document was to be delivered." (Emphasis added.) *Id.*

¶ 15 The defendant contends that the amended Rule 12(b)(4) applied retroactively to him. In support of his argument, the defendant cites *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 728-30 (2007), for the proposition that amendments to supreme court rules that are procedural in nature may be applied retroactively if said amendments do not interfere with a vested right. *Id.* The *Duggan* court held that amendments to Illinois Supreme Court Rule 303(a) (eff. May 1, 2007), which governed the time for filing civil appeals, applied retroactively such that the court could reach the merits of an appeal that would have been prematurely filed under the old version. *Duggan*, 376 Ill. App. 3d at 730-31. The defendant also cites *Commonwealth Edison Co. v. Will*

County Collector, 196 Ill. 2d 27, 47 (2001), for the proposition that the court should also consider the fairness of applying the new statutory rule. Neither of these cases directly concerned Rule 12(b)(4).

¶ 16 Even if we were to accept the defendant's position that the amended Rule 12(b)(4) retroactively applied to him, the defendant failed to meet the requirements of the amended rule because his verification did not contain the complete address to which the motion was to be delivered, as required by Illinois Supreme Court Rule 12(b)(4) (eff. Sept. 19, 2014). The address of the circuit court was contained nowhere on the motion, proof of service, or verification. Consequently, we find that the defendant's section 1-109 verification was insufficient to establish that his motion was mailed to the circuit court on a timely date. The proper date of filing was the date the circuit clerk received the motion, and the circuit court properly denied the motion for lack of jurisdiction. *People v. Flowers*, 208 Ill. 2d 291, 303 (2003) ("Where *** more than 30 days have elapsed since sentence was imposed and the trial court has not extended the limitation period upon proper application of defendant for good cause shown, the trial court is divested of jurisdiction to entertain a defendant's motion to vacate the judgment or reconsider the sentence pursuant to Rule 604(d).").

¶ 17 In so finding, we reject the defendant's contention that we should find that the defendant complied with Rule 12(b)(4) because the caption of his motion read: "IN THE CIRCUIT COURT OF PEORIA COUNTY, ILLINOIS" and the circuit court's denial of the motion showed that it was received. "Although minor defects will be excused, proof of proper service by mail must be made in substantial compliance with the requirements of Supreme Court Rule 12 [citation]." *Ingrassia v. Ingrassia*, 156 Ill. App. 3d 483, 502 (1987). The defendant's failure to include *any* address to which his motion was sent is not merely a "minor defect," as Rule

12(b)(4) required the verification to include the "*complete address* to which the document was to be delivered." (Emphasis added.) Ill. S. Ct. R. 12(b)(4) (eff. Sept. 19, 2014). Merely naming the court in which the document was to be filed in the motion itself did not constitute substantial compliance with Rule 12(b)(4).

¶ 18 II. Remand for Compliance with Rule 604(d)

¶ 19 The defendant contends that even in light of the above holding, the cause should be remanded for reappointed counsel's compliance with the certification requirement of Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). The defendant argues that, had he been afforded a hearing on his motion, he and counsel could have possibly presented evidence that the motion was timely filed. As we have found that the defendant's motion was not timely filed and the circuit court lacked jurisdiction to consider the motion, we find that remand for further postplea proceedings is unwarranted.

¶ 20 While Rule 604(d) instructs the circuit court to appoint counsel and promptly hear a postplea motion filed within the 30-day time limit required by that rule, we do not interpret the rule to require the circuit court to appoint counsel and hold a hearing on the issue of jurisdiction when a postplea motion is not timely filed. *Id.*; see also *Tlatenchi*, 391 Ill. App. 3d at 709. Rule 604(d) requires an attorney representing a defendant on a postplea motion to certify that he or she "has consulted with the defendant *** to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty, has examined the trial court file and report of proceedings of the plea of guilty, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). These requirements all relate to the substance of the arguments in the postplea motion,

not the threshold issue of whether the motion was timely filed such that the circuit court has jurisdiction.

¶ 21 We reject the defendant's reliance on *People v. Hansen*, 2011 IL App (2d) 081226, in support of his argument that this cause should be remanded for a hearing to give the defendant the opportunity to present evidence that his motion was timely filed. In *Hansen*, the record contained the envelope in which the defendant's notice of appeal was mailed, which had a clearly-legible postmark. *Id.* ¶ 14. The *Hansen* court held that the postmark was sufficient to establish the date of mailing despite the defendant's failure to comply with the affidavit requirement of Rule 12(b)(3). *Id.* The defendant argues that, had a hearing been held on his motion, he and counsel could have perhaps presented an envelope from Vandalia Correctional Center postmarked on or before March 7, 2013, despite the fact that no such envelope is contained in the record.

¶ 22 Here, unlike in *Hansen*, the defendant is not asking us to rule on whether a postmarked envelope contained in the record is sufficient proof of the date of mailing. Rather, the defendant essentially requests that we remand the cause to allow him to open discovery so that he can search for extrinsic evidence of the date of mailing. In making this request, the defendant has not cited any specific evidence that he would present at such a hearing. We decline to so extend the holding of *Hansen*.

¶ 23 We also note that the Fourth District has rejected the position that a postmark date, rather than compliance with Supreme Court Rule 12, is sufficient proof of mailing for a party to use the date of mailing as the date of filing. See *People v. Blalock*, 2012 IL App (4th) 110041, ¶ 11. Additionally, prior to *Hansen*, a different Second District panel held in *People v. Lugo*, 391 Ill. App. 3d 995 (2009), that a postmarked envelope was insufficient proof of mailing.

¶ 24

CONCLUSION

¶ 25

The judgment of the circuit court of Peoria County is affirmed.

¶ 26

Affirmed.